IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 57 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G E B

Versus

R K RAYON,DYEING & PRINTING MILLS

Appearance:

MR MAYA DESAI for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/04/1999

ORAL JUDGEMENT

#. In this civil revision application the arguments were partly heard on 23.12.98 and thereafter this matter was adjourned from time to time. None put appearance on behalf of the respondent.

#. Heard the learned counsel for the petitioner.

#. Relying on the Division Bench decision of this Court in the case of Kiran Industries v. G.E.B., Baroda & Anr., reported in 1995(2) GLH 1, the learned counsel for the petitioner contended that the Courts below have committed serious illegality in exercising jurisdiction in granting interim injunction in favour of the respondent. It is a case where the Board has raised a demand of electricity consumption charges and though the suit may be maintainable, challenging the demand, interim relief should not have been granted. It is the case of theft of electricity by plaintiff-respondent and merely because it has approached the Civil Court, the benefit as would have been available to it in case where it would have approached the appellate committee under Condition No.34 of the Conditions and Miscellaneous Charges for Supply of Electric Energy framed by Gujarat Electricity Board. Same relief could not have been granted by civil Court. The civil Court has to be guided in the case of grant of temporary injunction by provisions of Order 39, Rule 1 and 2, C.P.C. It is a case where there is a demand of Board of Rs.13 lacs and the trial Court has permitted restoration of electricity connection on payment of 30% of the said amount which has been reduced by the appellate Court to the tune of Rs.1 lac only which is wholly arbitrary and unjustified.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioner.

#. The order of the learned trial Court passed under Order 39, Rule 1 and 2 of C.P.C., 1908, was appealable under Order 43, Rule 1(r), C.P.C., 1908. The petitioner has not challenged that order by filing appeal. It is true that this Court in an appropriate case, may exercise suo-motu powers of revision under Section 115 of the Code but only in exceptional cases, these suo-motu powers can be exercised by this Court and not as a rule. Where the order of the trial Court is appealable and the party against whom that order has been passed is not challenging the same before the appellate Court in the revision filed by it against the order of the appellate Court passed in the appeal of the other side, it cannot be permitted to question the original order. Challenge which has been made by learned counsel for the petitioner to the order of the learned trial Court in these facts is not permissible. At the same time, I do not consider it to be a fit case where this Court may exercise its suo-motu powers of revision under Section 115 of the Code, revising the order of the learned trial Court.

#. However, the learned trial Court, while passing the

order in favour of plaintiff-respondent has not adhered to well settled and recognized principles of law for grant of temporary injunction under Order 39, Rule 1 and 2 of the Code. It has only been influenced by the fact that in the establishment of the plaintiff-respondent, 300 to 400 workers are there and if the electricity connection is not restored it would suffer irreparable loss which cannot be compensated in terms of money. This is not a proper approach. The Courts below have not to consider the matter one sided or with the approach that when the plaintiff has approached to it, he has to be granted some relief. The Board is the authority which provides to two crores of consumers, amenities of electricity. In case the consumers are committing theft of electricity and that too without making any payment to the Board on adjudication of the same when the demand has been raised, if the same has been stayed fully or partially, it may adversely affect the functioning of the Board. Theft of electricity is a serious thing as well as an offence also. Such matters are not to be taken atleast by the civil Courts lightly. Though in case if the establishment of the petitioner is closed 300 to 400 workers may be rendered jobless, but that is only one side of the coin. In case in such matters, the Courts are taking liberal view and even in the case of thefts of electricity protecting thieves by nominal deposit of the amount of demand, it will result in deprival of amenities of electricity to thousands and crores of consumers. This is a matter in which public at large may be sufferer and the Courts should not have been influenced by only having one sided approach. It is true that Condition No.34 of the Conditions and Miscellaneous Charges for Supply of Electric Energy of the Gujarat Electricity Board provides that in the first case of theft of electricity if the consumer files an appeal before the appellate committee on deposit of 30% of the demand of dues of electricity, the consumer will get reconnection of electricity as well as stay of recovery of 70% amount of demand. This provision which is made encourages the consumers to commit theft. They know very well that for first theft they will get this benefit, meaning thereby, by making a theft of electricity worth rupees one crore, for example, on payment of Rs.30 lacs, the consumer will enjoy Rs.70 lacs and that amount will be utilized in the business and the consumer will flourish unlawfully at the cost of electricity Board which is under an obligation to provide amenities of electricity to crores of consumers in the State. Be that as it may, it is for the Board and not for this Court to look into and suitably amend this condition.

#. However, in case, a consumer approaches to the civil Court, the civil Court has to decide the matter independently without being influenced by the provisions as contained in Condition No.34 of the Conditions and Miscellaneous Charges for Supply of Electric Energy of the Gujarat Electricity Board. In the case in hand, as stated earlier, the learned trial Court granted this relief of temporary injunction to the respondent by taking clue from Condition No.34 and as if it is binding on it.

#. Grant of temporary injunction under Order 39, Rule 1 and 2, C.P.C., 1908, is discretionary relief in equitable jurisdiction of the civil Court and no litigant can claim interim injunction in its favour as a matter of rule or right. The learned trial Court may or may not grant temporary injunction in a given case even where it finds that the plaintiff has a strong prima-facie case in its favour where it finds that declining of interim injunction will not cause any irreparable injury which cannot be compensated in terms of money to the litigant praying for the same and secondly where the balance of convenience also does not favour for grant of temporary injunction. In the matter of grant of temporary injunction, the conduct of litigant is also equally very relevant and important. In case where the conduct of the plaintiff is of such a nature which disentitles him from getting any temporary injunction from the Court, it may decline to grant the same. Looking into this nature of jurisdiction of the learned trial Court the appellate Court has also very very limited powers of judicial review in these matters.

#. The learned first appellate Court in this case, had decided the appeal in ignorance of the powers of judicial review as conferred upon it under Order 43, Rule 1(R) of the Code. It has decided as if it is adjudicating the matter to be decided finally between the parties. Though it has gone on the merits of the matter, but still, it has found that it is a case where the plaintiff-respondent has to pay something to the Board. The learned trial Court had ordered for payment of 30% of the demanded amount. If we go by figure of demand of Rs.13 lacs, it is certainly a meagre amount. In the facts of this case, I fail to see any justification in reducing this amount to Rs.1 lac. This approach of the first appellate Court is certainly perverse on the face of it. It was influenced by the fact that without seeking assistance of the Court, the plaintiff could have gone to the appellate comittee by paying 30% of the amount. It is true, but the plaintiff has approached the

civil Court and the civil Court has to decide the matter without being influenced by that Condition. It is a case of theft of electricity and at this interlocutory stage, it is very difficult to hold that it is not the case of theft. It is a matter of evidence as rightly the first appellate Court has observed, but still it has interfered in the matter and has giving finding that it may be a case of defective meter, then it should not have made interference with the order of the learned trial Court. It is not the finding of the learned trial Court that in this matter, the plaintiff should not have been order to pay anything to the defendant. The first appellate Court has was also of the opinion that something has to be taken by the defendant and something does not mean only what the appellate Court said is correct. The learned trial Court has also made very liberal approach and on payment of 30% of the demanded amount it has ordered for restoration of electricity connection in favour of plaintiff-respondent. It is clear case where the learned first appellate Court has committed a serious irregularity in exercising its jurisdiction which falls under clause (c) of sub-section (1) of Section 115 of the Code. In case this order of the learned first appellate Court is allowed to stand, it will certainly cause irreparable injury to the Board. This Court, in the case of Kiran Industries v. G.E.B., Baroda and Anr. (supra) has given out guidelines to be followed for considering the application of the plaintiff for grant of interim relief against disconnection of electric supply. The Court has held:

> "17. Before adverting to examination of the third question, it may be noted that a bill for consumption in due course is different from a bill for consumption within the purview of Condition No.34 of the Conditions. The latter type of bill would include what might be styled in the popular parlance as higher charges. This bill inclusive of so-called higher charges would be within the purview of Condition No.34 of the Conditions. A bill for consumption in due course would not be amenable to any appeal as provided in the aforesaid condition. It thus becomes clear that a suit by a consumer questioning the legality and validity of a bill could be either with respect to a bill for consumption in due course or a bill for consumption inclusive of higher charges. If the subject matter of a suit by a consumer is a bill inclusive of higher charges and if the consumer has unsuccessfully availed of the remedy of appeal as provided in

the aforesaid condition, the question would arise as to how discretion should be exercised by the competent Court for grant of any interim relief against disconnection of supply of energy by the Board on account of non-paymemnt of such bill."

....

"21. In such a situation, the balance of convenience would require imposition of suitable conditions while granting interim relief against disconnection of electric supply by the Board on account of non-payment of the bill in question. Such condition could be deposit of the entire amount of the bill with the Board on stipulation that, in the case of the consumer's ultimate success in the suit, the deposited amount would carry interest at the commercial rate from the date of deposit till final decision in the matter and the amount should be adjusted towards future bills treating the deposited amount as deposit earning interest and future bills to be adjusted against interest first and against the principal if amount of interest is not sufficient for the purpose of payment of the bill in question. Any erosion in the deposited amount because of adjustment in the running bill after the final decision in the manner would result tin earning interest on the outstanding amount."

##. This order of the learned trial Court is prima-facie contrary to the decision of this Court given in the case of Kiran Industries v. G.E.B. & Anr. (supra). In all eventualities and coupled with the fact that the same has not been challenged by petitioner by filing appeal, there was no justification whatsoever with the first appellate Court to interfere with the same. This order, in view of this decision of the Division Bench of this Court otherwise cannot be allowed to stand.

##. In the result, this civil revision application succeeds and the same is allowed. The order of the Joint District Judge, Surat, dated 22.3.93 in Civil Misc. Appeal No.13 of 1993 is quashed and set aside. The learned trial Court, Civil Judge (S.D.) Surat, is directed to decide Regular Civil Suit No.1228 of 1992 within a period of six months from the date of receipt of writ of this order.

(S.K.Keshote, J.)

[sunil]